

In the Matter of Merchant Mariner's Document No. Z-423931 and all other Seaman Documents
Issued to: JOSE PESQUEIRA

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

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JOSE PESQUEIRA

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 23 December 1958, an Examiner of the United States Coast Guard at Galveston, Texas, suspended Appellant's seaman documents for six months upon finding him guilty of misconduct. Two specifications allege that while serving as an able seaman on board the United States SS BARBARA LYKES under authority of the document above described, on or about 23 December 1958, Appellant assaulted and battered a member of the crew, Robert W. Woodville, by striking him with a dangerous weapon, to wit: a knife; on or about 23 December 1958, Appellant assaulted the same crew member with a knife.

At the hearing, Appellant was represented by counsel of his own choice. Appellant entered a plea of not guilty to the charge and each specification. The Investigating Officer introduced in evidence the testimony of the seaman allegedly attacked and an entry in the ship's Official Logbook, with attached statements, pertaining to this incident.

In defense, Appellant offered in evidence his sworn testimony in which he stated that after he was threatened by Woodville, Appellant got something, other than a knife, with which to protect himself. Appellant added that since Woodville then acted friendly, Appellant replaced the thing he had in his hand before he was chased by Woodville with a fire ax.

At the conclusion of the hearing, the Examiner announced the decision in which he concluded that the charge and two specifications had been proved. The order was then entered suspending all documents, issued to Appellant, for a period of six months.

The decision was served on 2 January 1959. Appeal was timely filed on 30 January 1959.

FINDINGS OF FACT

On 23 December 1958, Appellant was serving as an able seaman on board the United States SS BARBARA LYKES and acting under authority of his Merchant Mariner's Document No. Z-42931 while the ship was in the port of Galveston, Texas.

At 0030 on this date, Appellant returned on board in an intoxicated condition and went to the room which he shared with able seaman Robert W. Woodville. The latter was awakened when Appellant turned on the overhead light. Woodville asked Appellant to turn the light off. Appellant became angry and said he would straighten Woodville out. Woodville, a much larger man than Appellant, ignored this statement and turned over in his bunk until Appellant pulled Woodville's shoulder and exhibited a kitchen knife with a blade about twelve inches long. Woodville got out of his bunk. Appellant repeatedly threatened to injure Woodville with the knife while pointing it at him. Woodville was in fear for his life as he pleaded with Appellant not to use the knife. After a few minutes, Woodville persuaded Appellant to let him get a drink of water. In the passageway, Woodville managed to grab a fire ax off the bulkhead. He chased Appellant to the port passageway where Appellant threw the knife at Woodville hitting him with the handle. Woodville continued to pursue Appellant until he ran off the ship. The relief Mate found the knife in the port passageway a few minutes later.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. The decision should be reversed because it is based only on hearsay evidence contained in the logbook and the testimony of Woodville which contains many inconsistencies as to what happened. Appellant's version of the incident should have been accepted because it was truthful and consistent.

Woodville's testimony brought out the fact that there were other material witnesses whose testimony Appellant did not have an opportunity to obtain. Therefore, the case should be remanded.

In any event, the order of suspension imposed was too severe.

APPEARANCE: Fuhrhop and Brady of Galveston, Texas, by James C. Brady, Esquire of Counsel.

OPINION

As indicated by the above findings of fact, I agree with the Examiner's decision that Appellant was guilty of assault and battery as alleged.

As a matter of credibility, the Examiner stated that he accepted Woodville's version of the occurrence. There is no objection to this since, contrary to Appellant's contention, there are only one or two very minor inconsistencies contained in Woodville's testimony as to what happened. On the other hand, Appellant testified that he picked up some object, other than a knife, with which to defend himself against the larger man but Appellant does not remember what the object was. It seems inconsistent for Appellant to testify with certainty that it was not a knife and still not know what he held in his hand. Considering the numerous times that Appellant used the words "I don't remember"

in answering questions while testifying, the record indicates that Appellant's recollection of the incident was very poor as a result of his intoxication. In further support of Woodville's version is the statement of the relief Mate, attached to the logbook entry, that he found the knife in the port passageway after approaching the scene of the disturbance.

Concerning the contention that other material witnesses were present, Woodville's testimony indicates that two seaman came out of their rooms only after Appellant had thrown the knife and was about to leave the ship. Hence, the testimony of these men could not be expected to affect the outcome if the case were remanded to obtain their testimony. In addition, although the hearing was conducted on the day of the offense, counsel had ample opportunity to request an adjournment, after hearing Woodville's testimony, in order to interview crew members and to produce any additional witnesses desired.

It is believed that the specification alleging only an assault was intended to relate to what occurred before the two men left the room; and the specification alleging assault and battery was intended to pertain to the hitting of Woodville with the knife. (This is not clarified in the Examiner's decision.) In view of the continuity of events, the finding with respect to the less serious specification alleging assault is reversed and that specification is dismissed. The remaining specification is adequate to cover all phases of the incident which are more than adequate to justify the six months' suspension imposed by the Examiner.

ORDER

The order of the Examiner dated Galveston, Texas, on 23 December 1958, is AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 24th day of September 1959.